

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2693 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

A F CORDEIRO

Versus

STATE OF GUJARAT

Appearance:

MR MUKESH R SHAH for Petitioner
Mr.H.L.Jani, AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 28/07/2000

ORAL JUDGEMENT

The facts of this case are rather peculiar and strange. The petitioner Dr.A.F.Cordeiro was appointed as Medical Officer Class-II after due selection on 29.9.1968 and was posted in Primary Health Centre, District Panchayat, Panchmahals. It is the case of the petitioner

that some unknown persons forged his signature and submitted a resignation in his name from service. Consequent thereupon that letter of resignation dated 24.1.76 was accepted on 24.6.76. The petitioner remained out of government service but thereafter was reappointed in the year 13.3.78 again on the post of Medical Officer Class-II but on adhoc basis and pending selection of regular candidates. The petitioner was relieved of his services under his adhoc appointment on 28.1.1980 as regularly selected candidate through GPSC had been appointed.

2. The petitioner has been continuously representing his case to the department that he had never tendered any resignation from service and he was wrongly relieved from service earlier on 24.6.1979 on the basis of acceptance of his letter of resignation.

3. After due consideration of his representation, the State Government, Department of Health and Family Planning by order and in the name of the Governor of Gujarat passed a resolution on 16.6.1982. The resolution (as rendered into English from Gujarati) reads as under:-

Govt. of Gujarat
Health & Family Planning Dept.
Sachivalaya, Gandhinagar.
Dt: 16 June, 1982.

R E S O L U T I O N

Dr.A.F.Cordeiro, Ex-Medical Officer, GPSC Class II-S.H.Unit, Alkund, Dist. Dang has resigned vide letter dated 24.6.1976. He was taken on service as adhoc for the period between 13.3.78 to 27.1.80. But there after as the GPSC Candidate were made available he was relieved from 28.1.80.

Dr.A.F.Cordeiro has time and again represented to take back him on duty and after hearing him personally he has submitted that the fact of tendering resignation from 24.1.76 is not true. On detailed inquiry, it is found that, the resignation tendered vide letter dated 24.1.76 is not given by Dr.A.F.Cordeiro.

Considering the aforesaid facts and the request of Dr.A.F.Cordeiro, Dr.A.F.Cordeiro is again taken back on duty as Medical Officer, Public Health Service Class II and is located to District Panchayat on deputation.

The order with regard to regularise the absent

period of Dr.Cordeiro will be passed hereinafter.

This resolution is issued on the basis of the approval given on the file of Finance & G.T.D. Dt. 5.10.81 and 27.11.81.

By the order of
Governor of Gujarat
Sd/-
R.C.Jani
Section Officer
Health & Family Planning Dept.

As is stated in the resolution taken in favour of the petitioner, accepting his case that he had never tendered resignation, he was taken back on duty on his original post of Medical Officer Class II. In the said resolution, it is mentioned that "the orders with regard to regularising the period of absence from service of the petitioner will be passed in due course."

4. After waiting for a reasonable period for the passing of orders regularising his period of absence from service, the petitioner has approached this Court by way of this Special Civil Application. On 16.2.82 during the pendency of this application, directions were made to the State Government to pass an order with regard to regularising the period of absence from the services of the petitioner in terms of resolution dated 16.6.82 passed in his favour directing him to resume his service and duties as Medical Officer Class II.

5. On the time bound directions given by this Court, a second resolution was passed by the State in its concerned department in the name and under orders of the Governor dated 16.4.90. The said resolution, part of which has been assailed in this application by amendment, reads as under:-

R E S O L U T I O N

Dr.A.F.Cordeiro, Medical Officer Class-II, S.H.Unit, Gharkhadi, Dist. Dang (At present under District Panchayat, Kutch - Bhuj) who remained absent without prior intimation, for the period between 1.10.73 to 9.4.74 and dt. 4.12.74 to 19.3.78, and therefore, the said period is treated as unauthorised absence and therefore the said period will be treated as break in service and will not be counted for Pensionable Service.

2. The absence of Dr.Cordeiro for the period between

22.2.80 to 13.3.80 is regularised as under:-

1. Dt. 22.2.80 to 13.3.80 21 days as earned leave.
2. Dt.4.3.80 to 4.5.80 Dt. 51 as half earned leave.
3. Dt.5.5.80 to 7.2.82 644 days leave without pay

Under the Name & Order of
Governor of Gujarat

Section Officer
Health & Planning Department

6. The applicant by amendment of this application has mainly assailed the portion of the resolution which states that the period of absence from duties due to acceptance of his resignation which infact he never rendered would be "treated as unauthorised absence and will be treated as break in service and will not be counted for pensionable service."

7. Ld. Counsel appearing for the petitioner submits that the above mentioned part of the order (underlined in the quoted resolution above) is not only illegal but highly unjust. The State Government accepted the case of the petitioner that he had never tendered any resignation and the letter of resignation on which the State Government acted was by someone who had forged his signature. The petitioner was therefore allowed to rejoin his service on his original post. The period of his absence was directed to be regularised. It is contended that his absence from service was not an act of his volition but he was compelled to remain away from duties because a forged resignation letter was accepted and he was relieved. It is submitted that the period of his absence may be treated as diesnon meaning that it would not be treated valid for payment of any salary to him or a leave period. The principle of "no work no pay" may be applied for that period but in any way the said period of his absence cannot be treated as an 'unauthorised absence' for being treated as a 'break in service'. It is submitted that the said period in any case could be directed to be counted for pensionable service.

8. Mr.B.L.Jani, Ld. AGP made some attempts to support the impugned resolution passed by the Government on 16.4.90.

9. After considering the arguments advanced by the Learned Counsel by the petitioner, I find that there is great substance in the same. As the facts reveal and

have been accepted by the earlier resolution of the Government dated 16.6.82, the petitioner had never tendered any resignation and he was denied opportunity to serve for the period in question which has been treated as period of his 'unauthorised absence'. The petitioner having been compelled by force of circumstances to remain out of service on the basis of a forged resignation, the said period cannot be treated against him as a period of 'unauthorised absence'. In any case, there is no legal or factual justification to treat the said period as "a break in service" so as not to be counted even for pension.

10. The above mentioned facts reveal that for a part of the period of his absence he is not held entitled to any salary and for the remaining part of his alleged absence he had already worked on ad-hoc basis and has been paid salary in that status. The entire period of his absence from his regular service on the basis of acceptance of resignation may therefore be treated as diesnon but for the limited purpose of denying him salary or wages for the period of absence on the principle of "no work no pay". This Court however finds shockingly unjust and illegal to treat the period of his absence as 'unauthorised' and a 'break in service' to deny him that period for being counted even for pensionable service.

11. When by earlier resolution dated 16.6.82 the decision was taken to regularise his absence, the period of his absence could have been treated as diesnon only to deny him salary for the period. After considering his letter of resignation to be forged and permitting him to rejoin on his post his absence could not be alleged to be 'unauthorised' and in any case could not be treated to be a 'break in service'. On resumption of his service under resolution dated 16.6.82, he would be deemed to be in continuous service and the entire period has to be counted for the purpose of pension, seniority and terminal benefits.

12. Consequent to the discussions aforesaid, this Special Civil Application succeeds and is hereby allowed. The impugned resolution dated 16.4.90 (particularly the underlined portion) supra to the extent it treats the period of his absence as 'unauthorised' and a 'break in service' and 'not to be counted for pensionable service' is hereby quashed.

13. The respondents representing the Government of Gujarat are directed to treat the petitioner as being continuously in service from the date of his initial

appointment on the post of Medical Officer Class II dated 29.9.68 and he be granted seniority and all other terminal benefits inclusive of pension etc. by treating it so. The petition succeeds. Rule made absolute. The petitioner is also entitled to costs from the respondents which are quantified at Rs.500/-.

(D.M.Dharmadhikari, CJ)

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